

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**  
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**IN RE:**

**CASE NO.: 17-12677 (MG)**

**DANIEL and LUCY BENYAMIN,**

**CHAPTER 11**

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**OPPOSITION TO DEBTORS' OBJECTION TO CLAIM NO. 5**

Ditech Financial LLC ("Ditech"), by and through its undersigned attorney, hereby files its Opposition to the Objection of Debtors to Certain Proofs of Claim (the "Objection") seeking to expunge, *inter alia*, Claim No. 5, and in support thereof states as follows:

1. Ditech holds an interest in Debtors' real property located at 319 E. 105 St., 5E, New York, N.Y.
2. Ditech timely filed its Proof of Claim No. 5 on December 26, 2017 with a total debt of \$455,424.72.
3. Pursuant to Federal Rule of Bankruptcy Procedure 3001(f), a proof of claim (and, by extension, supplemental proof of claim) executed and filed in accordance with the Bankruptcy Rules "shall constitute prima facie evidence of the validity and amount of the claim."
4. By letter, dated April 18, 2018, Ditech's counsel advised the Court that a request was made to Ditech for the original collateral file and that once Ditech's counsel was in receipt of same, he would coordinate with Debtors' counsel to arrange a review of the file. (Docket No. 24)
5. By letter, dated April 18, 2018, Debtors' counsel confirmed that the Court had requested Ditech to submit to Debtors' counsel a copy of the assignment of mortgage

from IndyMac to Ditech. The letter further stated that the Debtors were not current on the payment of condo common charges. (Docket No. 25)

6. On May 3, 2018 and only two weeks after the abovementioned status letters, Debtors filed the Objection asserting that Ditech lacks standing due to failure to produce “the original note and mortgage or an assignment of same”. (Docket No. 29)
7. Debtor’s counsel failed to contact Ditech’s counsel regarding the status of the assignment of mortgage prior to the filing of the Objection.
8. The Assignment of Mortgage from OneWest Bank, FSB<sup>1</sup> to Ocwen Loan Servicing, LLC, dated March 2, 2017 is attached hereto as **Exhibit A**.
9. The Assignment of Mortgage from Ocwen Loan Servicing, LLC to Residential Credit Solutions, Inc., dated March 2, 2017 is attached hereto as **Exhibit B**.
10. The Assignment of Mortgage from Residential Credit Solutions, Inc. to Ditech Financial LLC, dated April 3, 2017 is attached hereto as **Exhibit C**.
11. The original mortgage is on file with the Nassau County Clerk’s office.
12. A request for the original note was made to Ditech and once the note is received by Ditech’s counsel, it will be made available for the Debtors’ review. In the meantime, attached hereto as **Exhibit D**, is a Possession Statement of Ditech, dated September 26, 2017, indicating that Ditech has possession of the original Note.
13. Based upon the submission of the assignment of mortgages, this matter should be adjourned pending the delivery of the collateral file to Ditech’s counsel and the Debtors’ review of the collateral file.

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<sup>1</sup> Based upon information and belief, OneWest Bank is the successor to certain assets of IndyMac Bank, FSB.

**WHEREFORE**, Ditech respectfully requests that the Debtors' objection be overruled and to allow Ditech's Proof of Claim as filed so as to preserve Ditech's Claim should any further amendments to Debtors' Plan alter Creditor's treatment, and for such other and further relief as the Court may deem just and proper.

Dated: Westbury, New York  
June 26, 2018

ROBERTSON, ANSCHUTZ & SCHNEID, P.L.

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